

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 229 of 2007

ZACHARIA MWANGI GITHIAKA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Conviction and Sentence of the Resident Magistrate's Court at Mukurweini in Criminal Case No. 123 of 2007 dated 11th August 2007 by V. W. Ndururu – Ag. SRM)

J U D G M E N T

This appeal is against sentence only. The appellant was convicted on his own plea of guilty of the offence of being in possession of bhang contrary to section 3(2) of Narcotic Drugs and Psychotropic Substances Control Act. Upon conviction, the appellant was sentenced to three years imprisonment. The Appellant was aggrieved by sentence and hence lodged this appeal. In his Petition of Appeal, the Appellant claims that the learned magistrate did not consider his mitigation, that he was of good character, a first offender and finally that the sentence imposed was excessively harsh.

When the Appeal came up for hearing before me on 21st July 2008 the Appellant in support of the Appeal orally submitted that the Court should extend its hand of mercy towards him, that the sentence imposed was harsh and excessive. He was of the opinion that a sentence of one year's imprisonment would have served the ends of justice.

Ms Ngalyuka, learned state counsel appeared for the State and neither opposed or supported the appeal. Instead she opted to leave the matter to the discretion of the court.

In matters of sentencing, the sentencing court exercises some discretion. Unless it is shown that in exercising the discretion, the sentencing court acted on wrong principle, failed to take into account relevant matters, took into account irrelevant considerations, imposed an illegal sentence, acted capriciously or that the sentence imposed was harsh and excessive the Appellate Court would hardly interfere with the sentence imposed.

In the circumstances of this case, the offence for which the Appellant was convicted carries a maximum sentence of twenty years imprisonment. The Appellant however was sentenced to three years imprisonment. Though the sentence is lawful, it would however appear to me harsh and excessive considering the amount of bhang involved. The appellant was a first offender and pleaded guilty to the charge in the first instance and thereby saved the Court valuable time. The appellant is remorseful and seems to have learned his lesson.

Taking all the foregoing into account I am constrained to interfere with the sentence to the extent that the Appellant shall now serve one year imprisonment effective from the date of conviction.

Dated and delivered at Nyeri this 22nd day of September 2008

M. S. A. MAKHANDIA

JUDGE